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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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1616

| SHORTENED STATUTORY PERIOD OF RESPONSE | NOTIFICATION DATE | DELIVERY MODE |
|--|-------------------|---------------|
| 3 MONTHS                               | 03/23/2007        | ELECTRONIC    |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/23/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Office Action Summary**

Application No.

10/681,236

Applicant(s)

MEYER-INGOLD ET AL.

Examiner

James H. Alstrum-Acevedo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-67 and 98-132 is/are pending in the application.
- 4a) Of the above claim(s) 45-46, 55, and 67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44, 47-54, 56-66 and 98-132 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/9/2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

**Claims 1-67 and 98-133 are pending.** Applicants cancelled claims 68-97. Claims 103-132 are new. Claims 45-46, 55, and 67 are withdrawn from consideration as being drawn to a non-elected species. **Claims 1-44, 47-54, 56-66, and 98-132 are under consideration in the instant office action.** Receipt and consideration of Applicants' amended claim set and remarks/arguments, submitted on September 29, 2006 are acknowledged. The instant application is under examination by a different Examiner.

#### ***Petition to Correct Inventorship***

In view of the papers filed November 29, 2005, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by the addition of (1) Karl-Heinz Wöller and (2) Carsten Kartkopf as inventors of the instant application.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

#### ***Election/Restrictions***

Applicant's election with traverse of Group I (claims 1-67 and 98-102) in the reply filed on September 29, 2006 is acknowledged. The traversal is on the ground(s) that the different groups would not present a search burden to the Examiner. This is not found persuasive because

mere argument is unpersuasive, and Applicants' traversal is moot because the non-elected claims have been cancelled. Claims 68-97 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 29, 2006. It is noted that Applicants have canceled the non-elected claims.

The requirement is still deemed proper and is therefore made FINAL.

#### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Drawings***

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because Figures 2-4 are unreadable (i.e. one cannot ascertain what is supposed to be depicted in said figures). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

#### ***Specification***

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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The use of the trademarks IRGASAN<sup>®</sup> ([0005]), AVICEL<sup>®</sup> ([00116]), METHOCCEL<sup>®</sup> ([0119]), CARBOPOL<sup>®</sup> ([0132] and [0134]), ARISTOFLEX<sup>®</sup> ([0138]), SIMUGEL<sup>®</sup> ([0139]), DESMODUR<sup>®</sup> ([0217], [0223], [0229]-[0235]), LEVAGEL<sup>®</sup> ([0217], [0223], [0229]-[0235]) have been noted in this application. Trademarks should be capitalized wherever these appear and be accompanied by the generic terminology. The cited paragraphs are based upon the PG-PUB of the instant application.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The provisional rejection of claims -25, 40, 43-44, 47-54, 58, 60-62, 66, and 98-102 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-4, 8-13, 16-17, 20-21, 23-29, 45, 55-56, 60-63, 65, 67-71, 73-86, and 99-103 of copending application 10/681,204 (copending '204) **is maintained** for the reasons of record set forth on page 5 of the office action mailed on July 27, 2006.

***Response to Arguments***

Applicant's arguments filed September 28, 2006 have been fully considered but they are not persuasive. Applicants' have requested that the instant rejection be held in abeyance. No substantive arguments were presented traversing this rejection. The rejection is maintained.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

**Claims 4, 7-10, 13-14, 16-17, 19, 47, 59, 65, 98-100, 107, 109-112, and 127-130 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 4, 10, and 107 are vague and indefinite, because it is unclear what constitutes a "sheet-like" structure and how said structure would differ from a sheet. The term "sheet-like" is

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not defined in the specification. Therefore, the metes and bounds of a “sheet-like” structure would be undeterminable to an ordinary skilled artisan.

Claims 7 and 109 are vague and indefinite, because it is unclear what constitutes a “gel-like” material and how said material would differ from a gel. The term “gel-like” is not defined in the specification. Therefore, the metes and bounds of a “gel-like” material would be undeterminable to an ordinary skilled artisan.

Claim 59 is vague and indefinite, because it is unclear what is meant by “substantially transparent”. The term “substantially transparent” is not defined in the specification. Therefore, the metes and bounds of a “substantially transparent” material would be undeterminable to an ordinary skilled artisan.

Claim 65 is vague and indefinite, because it is unclear what is meant by “residue of a Bi containing catalyst,” specifically it is unclear what amount of a Bi containing catalyst would be considered “a residue”. The phrase “residue of a Bi containing catalyst” is not defined in the specification. Therefore, the metes and bounds of a “residue of a Bi containing catalyst” material would be undeterminable to an ordinary skilled artisan.

Claim 65 recites the limitation “the residue of a Bi containing catalyst” in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

The term "noticeable discoloration" in claims 98-100 and 127-128 is a relative term, which renders the claim indefinite. The term "noticeable discoloration" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term "noticeable discoloration" is not defined in the specification and no guidance is provided as to how one would ascertain noticeable discoloration. The specification also does not state what is the color of the glass or the polymer composite (pg. 8; [0044]). Therefore, the metes and bounds of a "noticeable discoloration" would be undeterminable to an ordinary skilled artisan. It is also noted that what may constitute "noticeable discoloration" would vary depending on the viewer.

The rejection of claims 101 and 102 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention **is maintained** for the reasons of record set forth on page 10 of the office action mailed on July 27, 2006. New **claims 129 and 130 are appended to this rejection** for the reasons of record.

The remaining claims are rejected for depending from a rejection claim.

### ***Response to Arguments***

Applicant's arguments filed September 29, 2006, regarding the rejection of claims 101 and 102 under 35 U.S.C. 112, second paragraph and as may apply to new claims 129-130 have been fully considered but they are not persuasive. Applicants allege that their claim amendments have clarified the meaning of "JIS 2801:2000." The Examiner respectfully disagrees. The



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meaning of "JIS 2801:2000" is unknown to the instant Examiner and does not appear to refer to any standard U.S. bacterial assay. The term "JIS 2801:2000" is neither defined nor described in the instant specification. Therefore, an ordinary skilled artisan would not know what is being referred to by "JIS 2801:2000."

The rejection of claims 26-27, 36, and 39 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn because the terms "hydroxy number" (claims 26-27 and 36) as well as "functionality number" (claim 39) have been shown to be terms of art.

#### ***Response to Arguments***

Applicant's arguments, see pages 26-27, filed September 26, 2006, with respect to the rejection of claims 26-27, 36, and 39 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention have been fully considered and are persuasive. The rejection of claims 26-27, 36, and 39 under 35 U.S.C. 112, second paragraph, as being indefinite has been withdrawn.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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The rejection of claims 1-8, 10, 19, 25-39, 41, 48-50, 54, 56-62, 64-66, and 101-102 under 35 U.S.C. 103(a) as being unpatentable over Ganster (U.S. Patent No. 6,191,216; "Ganster") in view of Gilchrist (U.S. Patent No. 5,470,585; "Gilchrist") **is maintained** for the reasons of record set forth on pages 11-14 of the office action mailed on July 24, 2006 and further articulated below. Claims 9 and 11-12 are appended to this rejection per the combined teachings of Ganster and Gilchrist, which are set forth below. In summary, **claims 1-12, 19, 25-39, 41, 48-54, 56-62, 64-66 and 101-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganster (U.S. Patent No. 6,191,216; "Ganster") in view of Gilchrist (U.S. Patent No. 5,470,585; "Gilchrist").**

*Additional Relevant teachings of Ganster and Gilchrist*

Ganster teaches that the invented **polyurethane is self-adhesive** and consists of polyether polyols with 2-6 hydroxyl groups and having **OH values (i.e. hydroxy numbers) of 20-112** (col. 2, lines 3-7). Ganster teaches that the polyurethanes may contain additives, such as **inorganic fillers**, including **titanium oxide (i.e. TiO<sub>2</sub>)** or zinc oxide together with **glass fibers** of 0.1-1 mm in length (col. 3, lines 44-54), preferably in an amount up to 100 wt.% (col. 3, lines 44-54). Gilchrist teaches in col. 3, lines 50-62 antimicrobial glass compositions comprising: (1) **not more than 40 mole % M<sub>2</sub>O or MO, not less than 10 mole% M<sub>2</sub>O or MO** and (2) **not more than 50 mole % nor less than 38 mole % phosphorous pentoxide**, and (3) with the inclusion of **0.05-5.0 mole % silver oxide**, wherein M<sub>2</sub>O refers to alkali oxides (i.e. sodium oxide, potassium oxide, or mixtures thereof) and MO refers to alkaline earth oxides (i.e. CaO, MgO) or ZnO or mixtures thereof.

***Response to Arguments***

Applicant's arguments filed September 28, 2006 have been fully considered but they are not persuasive. Applicants' traversal of the instant rejection is based on their allegation that inappropriate hindsight reconstruction was used to make the combination of Ganster and Gilchrist. The Examiner respectfully disagrees.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Contrary to Applicants' opinion, the prior art does reasonably provide a motivation to combine the cited references. Applicants are directed to Ganster's teaching that the polyurethanes may contain additives, such as **inorganic fillers**, including **titanium oxide (i.e. TiO<sub>2</sub>)** or zinc oxide together with **glass fibers** of 0.1-1 mm in length (col. 3, lines 44-54). Ganster specifically states that the invented polyurethanes are particularly suitable for **medical products that come into contact with human and animal tissues**, including open **wounds, body fluids, or secretions** (e.g. wound exudates). The use of the polyurethanes in **medical application is preferred**, in particular as **rapid wound dressings**, sticking wound care products, **to absorb blood and wound secretions**, and to provide padding and thermal insulation (col. 4, lines 45-60). It would have been obvious to combine Gilchrist with Ganster, because Gilchrist teaches **antimicrobial medicinal glasses** that may be in the form of a powder,

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granules, or woven into a dressing, as part of wound management products (abstract, col. 3, lines 43-49). Furthermore, an ordinary skilled artisan would have been motivated to combine Gilchrist's antimicrobial glasses with Ganster's polyurethane materials to obtain a product that is capable of treating and/or preventing bacterial infection, which would promote wound healing and prevent other medical problems. It is also noted that Gilchrist teaches that the antimicrobial glass may be used as filler in polymers for surface release (e.g. in silicones, natural rubber, and medical plastics and polymers). Ganster's invented polyurethanes are obviously medical plastics, per Ganster's teachings. For the aforementioned reasons and the reasons of record, the Examiner concludes that an ordinary skilled artisan would have had a reasonable expectation of success upon modification of Ganster's polyurethanes to utilize Gilchrist's anti-microbial inorganic glasses as filler and that the instant rejection remains proper. Regarding the claimed properties of the polyurethane and/or antimicrobial glass, it is the Examiner's position that these properties are present in the product resulting from the combined prior art teachings, because the combined prior art would yield an article comprising the same ingredients (i.e. polyurethane and antimicrobial glass). Regarding the claimed thickness, it is the Examiner's position that this is a parameter that an ordinary skilled artisan would routinely optimize. It is incumbent upon Applicants to demonstrate the criticality of the claimed thicknesses. Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art is fairly suggestive of the claimed invention.

The rejection of claims 23-24 under 35 U.S.C. 103(a) as being unpatentable over Ganster in view of Gilchrist, and further in view of Park et al. (US 2004/0018227) is maintained for the

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reasons of record set forth on pages 14-17 of the office action mailed on July 24, 2006 and further articulated below. New claims 103, 106-126, and 129-130 are appended to this rejection for the reasons of record set forth in the instant office action and the office action mailed on July 24, 2006. In summary, **claims 23-24, 103, 106-126, and 129-130 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganster in view of Gilchrist as applied to claims 1-12, 19, 25-39, 41, 48-54, 56-62, 64-66 and 101-102 above, and further in view of Park et al. (US 2004/0018227).**

### *Response to Arguments*

Applicant's arguments filed September 28, 2006 have been fully considered but they are not persuasive. Applicants' traversal of the instant rejection is based on their allegation that inappropriate hindsight reconstruction was used to make the combination of Ganster and Gilchrist. Applicants' also allege that the humectants cited in the previous office action would not be suitable as superabsorbers. The Examiner respectfully disagrees with Applicants' traversal arguments.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The Examiner's position regarding this traversal argument is the

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same as stated above for the combination rejection under 35 U.S.C. §103 (a) utilizing the Ganster and Gilchrist references.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., number of salified carboxy groups per molecule and/or that the superabsorber be derived from acrylic acid, sodium acrylate, or other polyacrylates and copolymers thereof) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is also noted that the term "superabsorber" is not defined in the specification. Therefore, a reasonable broad interpretation of said term would be any material capable of absorbing anything, because the term is not redefined in the specification to limit it to the absorption of liquids. Therefore, the humectants specifically cited by the Examiner in the office action mailed on July 24, 2006 as well as other polymeric humectants taught by Park would reasonably read on the term superabsorber.

Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art is fairly suggestive of the claimed invention.

**Claims 23-24, 103-104, 106-126, and 129-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganster in view of Gilchrist, claims 1-12, 19, 25-39, 41, 48-54, 56-62, 64-66 and 101-102 above, and in further view of Bowditch (EP 0196364 A2).**

*Applicant Claims*

Applicants claim an antimicrobial wound covering article, wherein at least a part of said article comprises polyurethane resin associated with a particulate silver-containing glass and said article comprises a superabsorber.

*Determination of the Scope and Content of the Prior Art (MPEP §2141.01)*

The teachings of Ganster and Gilchrist were set forth on pages 11-14 of the office action mailed on July 24, 2006. Bowditch teaches a hydrophilic polyurethane foam that is particularly suited for use in external biomedical applications as, for example, a laminated medical/surgical dressing (abstract). The foam is prepared by blowing an MDI-based prepolymer (MDI = methylene diphenyl diisocyanate) with a non-aqueous blowing agent (e.g. pressurized air), and polymerizing the prepolymer with polyoxyethylene polyol having at least two hydroxyl equivalents per mole (pg. 3, lines 5-10; pg. 4, line 8 through pg. 5, line 5). Additional hydrophilic compounds may be incorporated with the foam to increase its capacity to absorb aqueous liquids, such as derivatives of silica (i.e. SiO<sub>2</sub> derivatives), natural and artificial fibers, and hydrophilic polymers. A particularly useful hydrophilic polymer is the copolymer of 2-propenoic acid (i.e. acrylic acid) and the potassium salt of 2-propenoic acid (i.e. potassium acrylic acetate), such as the white powder manufactured by Arakawa Chemical known under the U.S. registered trademark of ARASORB<sup>®</sup>. Acrylic acid is an olefinic monomer. The acrylic acid copolymer is suitable for use as an absorbent material because it holds over 800 times its weight in water (pg. 6, lines 18-29). Bowditch's foams are particularly useful in biomedical applications, such as for use in anatomic supports and wound dressing materials, because of its

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hydrophilic nature and because it can withstand steam autoclave sterilization and attack by solvents and microbes (pg. 7, lines 29-34). Foam sheets of Bowditch's materials may be used alone as a bandaging material or in combination with other materials to form a layered bandage or dressing. Bowditch's foam may be incorporated into any layered dressing in which an absorbent layer is necessary or desirable (pg. 8, lines 10-15).

*Ascertainment of the Difference Between Scope the Prior Art and the Claims*

*(MPEP §2141.012)*

Ganster and Gilchrist lack the teaching of a superabsorber. This deficiency is cured by the teachings of Bowditch.

*Finding of Prima Facie Obviousness Rational and Motivation*

*(MPEP §2142-2143)*

It would have been prima facie obvious to a person of ordinary skill in the art at the time of the instant invention to combine the teachings of Ganster/Gilchrist with those of Bowditch, because Ganster teaches invented polyurethane medical products intended for medical applications, such as the absorption of blood and wound secretions (col. 4, lines 54-61) and Bowditch teaches materials having excellent absorbent properties that may be incorporated into wound dressings/bandages, wherein the absorption of liquids is necessary or desirable. An ordinary skilled artisan would have been motivated to modify Ganster's materials/products to utilize Bowditch's materials as an absorbent layer, because one utility of Ganster's materials/products is as a wound dressing/bandage that absorbs blood and wound secretions. An ordinary skilled artisan would have had a reasonable expectation of success, because the



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absorbent materials utilized by Bowditch have the capacity to absorb up to 800 times its weight in water. Regarding, claims 120-121, it is the Examiner's position that Ganster's teaching that the polyurethane materials contain stabilizers enabling these to be sterilized using high energy gamma rays would obviously yield products having the claimed property of exhibiting no "noticeable discoloration" after have been kept at 50 °C for 6 months or after being sterilized with 26 kGy of gamma rays. Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art is fairly suggestive of the claimed invention.

**Claims 23-24 and 103-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganster in view of Gilchrist, as applied to claims 1-12, 19, 25-39, 41, 48-54, 56-62, 64-66 and 101-102 above, and in further view of Blank et al. (U.S. Patent No. 5,079,004).**

#### *Applicant Claims*

Applicants' claims have been described above.

#### *Determination of the Scope and Content of the Prior Art (MPEP §2141.01)*

The teachings of Ganster and Gilchrist were set forth on pages 9-11 of the office action mailed on July 24, 2006. Blank teaches an antimicrobial superabsorbent composition and method, wherein said composition comprises a cross-linked hydrophilic sodium salt form of a partially neutralized acrylic acid-based polymer gel having covalently bonded thereto a silane. The composition can be in the form of flakes, strips, powders, filaments, fibers, or films and may be applied in the form of a coating (abstract; title; col. 4, lines 37-47). Blank's

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compositions have a wide range of applications, including as bandages and woven or unwoven materials, such as surgical gauze (col. 7, line 61 through col. 8, line 2).

***Ascertainment of the Difference Between Scope the Prior Art and the Claims***

***(MPEP §2141.012)***

Ganster and Gilchrist lack the teaching of a superabsorber. This deficiency is cured by the teachings of Blank.

***Finding of Prima Facie Obviousness Rational and Motivation***

***(MPEP §2142-2143)***

It would have been prima facie obvious to a person of ordinary skill in the art at the time of the instant invention to combine the teachings of Ganster/Gilchrist with those of Blank, because Ganster teaches invented polyurethane medical products intended for medical applications, such as the absorption of blood and wound secretions (col. 4, lines 54-61) and Blank teaches antimicrobial superabsorbent materials that may be used in applications including bandages. An ordinary skilled artisan would have been motivated to modify Ganster's materials/products to incorporate Blank's materials as an absorbent layer, because one utility of Ganster's materials/products is as a wound dressing/bandage that absorbs blood and wound secretions. An ordinary skilled artisan would have had a reasonable expectation of success, because the absorbent materials utilized by Blank's compositions have both antimicrobial and superabsorbent properties. Regarding, claims 127-128, it is the Examiner's position that Ganster's teaching, that the polyurethane materials contain stabilizers enabling these to be sterilized using high energy gamma rays would obviously yield products having the claimed

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property of exhibiting no "noticeable discoloration" after have been kept at 50 °C for 6 months or after being sterilized with 26 kGy of gamma rays. Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art is fairly suggestive of the claimed invention.

The rejection of claims 14 and 17 under 35 U.S.C. 103(a) as being unpatentable over Ganster in view of Gilchrist as applied to claims 1-12, 19, 25-39, 41, 48-54, 56-62, 64-66 and 101-102 above, and further in view of Kydonieus (U. S. Patent No. 5,591,820;"Kydonieus") **is maintained** for the reasons of record set forth on pages 19-21 of the office action mailed on July 24, 2006 and further articulated below.

### ***Response to Arguments***

Applicant's arguments filed September 28, 2006 have been fully considered but they are not persuasive. Applicants' traversal of the instant rejection is based on their allegation that inappropriate hindsight reconstruction was used to make the combination of Ganster and Gilchrist. No specific arguments traversing the combination of Ganster, Gilchrist, and Kydonieus have been set forth. Applicants have merely restated their arguments in traverse of the Ganster/Gilchrist combination rejection. The Examiner's position regarding Applicants' traversal arguments of the Ganster/Gilchrist is the same as those set forth above in the instant office action. Therefore, the claimed invention, as a whole, would have been *prima facie*

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obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art is fairly suggestive of the claimed invention.

The rejection of claim 17 under 35 U.S.C. 103(a) as being unpatentable over Ganster in view of Gilchrist and further in view of Daoud et al. (U.S. Patent No. 4,920,172) **is maintained** for the reasons of record set forth on pages 17-18 of the office action mailed on July 24, 2006 and further articulated below.

### ***Response to Arguments***

Applicant's arguments filed September 28, 2006 have been fully considered but they are not persuasive. Applicants' traversal of the instant rejection is based on their allegation that inappropriate hindsight reconstruction was used to make the combination of Ganster and Gilchrist. No specific arguments traversing the combination of Ganster, Gilchrist, and Daoud et al. have been set forth. Applicants have merely restated their arguments in traverse of the Ganster/Gilchrist combination rejection. The Examiner's position regarding Applicants' traversal arguments of the Ganster/Gilchrist is the same as those set forth above in the instant office action. Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art is fairly suggestive of the claimed invention.

The rejection of claims 16 and 18 under 35 U.S.C. 103(a) as being unpatentable over Ganster in view of Gilchrist, Daoud et al., and further in view of Park **is maintained** for the

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reasons of record set forth on pages 18-19 of the office action mailed on July 24, 2006 and further articulated below.

***Response to Arguments***

Applicant's arguments filed September 28, 2006 have been fully considered but they are not persuasive. Applicants' traversal of the instant rejection is based on their allegation that inappropriate hindsight reconstruction was used to make the combination of Ganster and Gilchrist. No specific arguments traversing the combination of Ganster, Gilchrist, Daoud, and Park have been set forth. Applicants have merely restated their arguments in traverse of the Ganster/Gilchrist combination rejection. The Examiner's position regarding Applicants' traversal arguments of the Ganster/Gilchrist rejection is the same as those set forth above in the instant office action. Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art is fairly suggestive of the claimed invention.

The rejection of claims 13, 15-16, and 18 under 35 U.S.C. 103(a) as being unpatentable over Ganster in view of Gilchrist, Park and further in view of Kydonieus **is maintained** for the reasons of record set forth on pages 19-21 of the office action mailed on July 24, 2006 and further articulated below.

***Response to Arguments***

Applicant's arguments filed September 28, 2006 have been fully considered but they are not persuasive. Applicants' traversal of the instant rejection is based on their allegation that

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inappropriate hindsight reconstruction was used to make the combination of Ganster and Gilchrist. No specific arguments traversing the combination of Ganster, Gilchrist, Park, and Kydonieus have been set forth. Applicants have merely restated their arguments in traverse of the Ganster/Gilchrist combination rejection. The Examiner's position regarding Applicants' traversal arguments of the Ganster/Gilchrist rejection is the same as those set forth above in the instant office action. Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art is fairly suggestive of the claimed invention.

The rejection of claims 40, 52-44, 51-53, and 63 under 35 U.S.C. 103(a) as being unpatentable over Ganster in view of Gilchrist as applied to claims 1-12, 19, 25-39, 41, 48-54, 56-62, 64-66 and 101-102 above, and further in view of Fechner (US 2004/0137075; "Fechner") **is maintained** for the reasons of record set forth on pages 22-24 of the office action mailed on July 24, 2006 and further articulated below.

### ***Response to Arguments***

Applicant's arguments filed September 28, 2006 have been fully considered but they are not persuasive. Applicants' traversal of the instant rejection is based on their allegation that inappropriate hindsight reconstruction was used to make the combination of Ganster and Gilchrist. No specific arguments traversing the combination of Ganster, Gilchrist, and Fechner have been set forth. Applicants have merely restated their arguments in traverse of the Ganster/Gilchrist combination rejection. The Examiner's position regarding Applicants'

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traversal arguments of the Ganster/Gilchrist is the same as those set forth above in the instant office action. Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art is fairly suggestive of the claimed invention.

The rejection of claims 98-100 under 35 U.S.C. 103(a) as being unpatentable over Ganster in view of Gilchrist as applied to claims above, and further in view of Nomura (US 2001/0023156; "Nomura") **is maintained** for the reasons of record set forth on pages 24-26 of the office action mailed on July 24, 2006 and further articulated below.

### ***Response to Arguments***

Applicant's arguments filed September 28, 2006 have been fully considered but they are not persuasive. Applicants' traversal of the instant rejection is based on their allegation that inappropriate hindsight reconstruction was used to make the combination of Ganster and Gilchrist. Applicants also allege that the instant combination (Ganster/Gilchrist/Nomura) does not obviate the cited claims, because Nomura's method of testing for discoloration does not utilize 26 kGy gamma rays and inspect discoloration of the tested materials, after having been kept at 50 °C for 6 months. The Examiner's position regarding Applicants' traversal arguments of the Ganster/Gilchrist is the same as those set forth above in the instant office action. Regarding Applicants' allegation that Nomura's teachings do not obviate Applicants' claims, the Examiner respectfully disagrees. Firstly, Applicants have provided no evidence to demonstrate that the discoloration resistance described by Nomura would not be exhibited after exposure of the materials of the combined prior art after having been kept at 50 °C for 6 months after

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exposure to 26 kGy gamma rays. It is also noted that Ganster specifically teaches the addition of stabilizers to allow the sterilization of Ganster's products with high-energy gamma radiation (col. 3, lines 24-37). As a result, the combination of Ganster/Gilchrist with Nomura would have provided an ordinary skilled artisan with a reasonable expectation of success that the resulting materials would exhibit no noticeable discoloration after being stored at 50 °C for 6 months after exposure to 26 kGy gamma rays. Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art is fairly suggestive of the claimed invention.

The rejection of claims 20-22 under 35 U.S.C. 103(a) as being unpatentable over Ganster in view of Gilchrist and Nomura as applied to claims above, and further in view of Lee (US 2002/0086039; "Lee") **is maintained** for the reasons of record set forth on pages 26-27 of the office action mailed on July 24, 2006 and further articulated below.

### ***Response to Arguments***

Applicant's arguments filed September 28, 2006 have been fully considered but they are not persuasive. Applicants' traversal of the instant rejection is based on their allegation that inappropriate hindsight reconstruction was used to make the combination of Ganster and Gilchrist and presumably the alleged deficiencies of the combination utilizing Ganster, Gilchrist, and Nomura. No specific arguments traversing the combination of Ganster, Gilchrist, Nomura and Lee have been set forth. Applicants have merely restated their arguments in traverse of the Ganster/Gilchrist combination rejection and presumably the Ganster/Gilchrist/Nomura



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combination rejection. The Examiner's position regarding Applicants' traversal arguments of the Ganster/Gilchrist is the same as those set forth above in the instant office action. The Examiner's position regarding the traversal of the Ganster/Gilchrist/Nomura combination rejection is the same as stated above in the instant office action. Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art is fairly suggestive of the claimed invention.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following prior art is considered relevant because it teaches wound dressings/bandage materials comprising absorbents: Stickels et al. (U.S. Patent No. 6,566,575); Burton et al. (US 2004/0133143); and Burton (US 2005/0226917).

**Claims 1-44, 47-54, 56-66, and 98-132 are rejected. The drawings and specification are objected. No claims are allowed.**

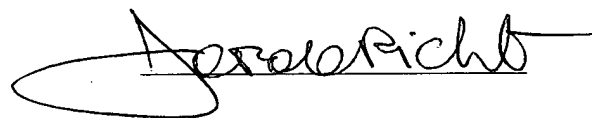
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Alstrum-Acevedo whose telephone number is (571) 272-5548. The examiner can normally be reached on M-F, 9:00-6:30, with every other Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James H. Alstrum-Acevedo, Ph.D.  
Patent Examiner  
Technology Center 1600

A handwritten signature in black ink, appearing to read "Johann Richter", with a large, stylized loop at the beginning.

Johann Richter, Ph. D., Esq.  
Supervisory Patent Examiner  
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